

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
NUMBERS 52497 AND 52498 FILED)
TO APPROPRIATE WATER FROM)
CUMMINGS SPRING AND LITTLE SALT)
SPRING LOCATED IN PILOT CREEK)
AND GREAT SALT LAKE DESERT)
VALLEYS, RESPECTIVELY, ELKO)
COUNTY, STATE OF NEVADA.)

RULING

GENERAL

I.

Application 52497 was filed on September 13, 1988 by Simplot Land and Cattle Company to appropriate 0.05 c.f.s. of water from Cummings Spring for stockwatering of 1,000 head of cattle within the SE1/4 NE1/4 of Section 32, T.36N., R.69E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 32, T.36N., R.69E., M.D.B.&M.¹

Application 52498 was filed on September 13, 1988 by Simplot Land and Cattle Company to appropriate 0.05 c.f.s. of water from Little Salt Spring for stockwatering of 1,000 head of cattle within the NE1/4 NE1/4 of Section 29, T.35N., R.70E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 29, T.35N., R.70E., M.D.B.&M.¹

The subject applications were timely protested on December 15, 1988 by the United States Bureau of Land Management generally on the following grounds:

"That the water is required for multiple use management of the public land and the source is a public water reserve which was reserved for public use under the authority of Executive Order 107 on April 17, 1926 and as identified in 43 CFR 2311. The water is therefore, not available for appropriation under Nevada State Law."

¹ Public Record in the office of the State Engineer.

FINDINGS OF FACT

I.

The grounds for the United States Bureau of Land Management protest has been extensively and fully considered and ruled upon in prior proceedings.²

II.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by executive order on the sources described under the subject applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁴:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

² See State Engineers Ruling No. 3219 on Application 37061 et. al; issued on July 26, 1985. Public record in the office of the State Engineer.

³ NRS Chapter 533.

⁴ NRS Chapter 533.370

III.

The State Engineer concludes that if in fact these sources of water meet the criteria of a Public Water Reserve, they shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely if the sources do not qualify for reserved status, any permits granted on the sources would only be later in priority to any other vested rights that may exist. Only after a general adjudication of all rights would there be a determination made of the extent of any other vested claims and the validity of any claimed or unclaimed reserved rights.

RULING

The protests to applications 52497 and 52498 are hereby overruled and said applications are hereby approved subject to:

1. Payment of the statutory permit fees.
2. The prior reserved rights of the United States if in fact these rights exist and the sources meet the proper criteria.
3. All other existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Date this 25th day of

April, 1990